

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN PETZ,

Plaintiff-Appellant,

v

COFFMAN ELECTRICAL EQUIPMENT
COMPANY,

Defendant-Appellee.

UNPUBLISHED

January 17, 2012

No. 301289

Kent Circuit Court

LC No. 09-006175-CK

Before: HOEKSTRA, P.J., and MARKEY and BORRELLO, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting defendant's motion for summary disposition as to plaintiff's action for unpaid commissions under the Michigan Sales Representative Commission Act, MCL 600.2961. Plaintiff also appeals the trial court's subsequent order denying his motion for relief from the order granting summary disposition. We reverse and remand for entry of judgment on the accepted case evaluation award.

The trial court heard defendant's motion for summary disposition on May 21, 2010, and at the conclusion of oral argument, the court stated it would issue a written opinion. Meanwhile, the parties received notice of and attended a case evaluation hearing on July 8, 2010. Both parties accepted the case evaluation award, which required defendant to pay plaintiff \$25,000. Notice of this acceptance was filed August 6, 2010. On August 31, 2010, the trial court entered its opinion and order granting defendant's motion for summary disposition. Plaintiff moved for relief from the order pursuant to MCR 2.612(A)(1)—clerical mistake; (C)(1)(a)—mistake, inadvertence or excusable neglect; and (C)(1)(f)—any other reasons justifying relief. At the hearing on the motion for relief, the trial court noted it would not have entered the opinion and order granting summary disposition had it known case evaluation had been accepted by both parties. Nevertheless, the trial court denied the motion because it believed the parties agreed at the hearing that the motion depended entirely on MCR 2.612(A)(1), and no clerical mistake had occurred. Our review of the record reveals that while the parties agreed the issue turned on MCR 2.612, they did not agree that a specific subsection of the court rule controlled.

This court reviews a trial court's decision to grant relief from judgment for an abuse of discretion. *Detroit Free Press, Inc v Dep't of State Police*, 233 Mich App 554, 556; 593 NW2d 200 (1999). "An abuse of discretion occurs when the trial court chooses an outcome falling

outside the range of principled outcomes.” *Edry v Adelman*, 486 Mich 634, 639; 786 NW2d 567 (2010) (citation omitted).

Relief is properly granted pursuant to MCR 2.612(A)(1) to allow the record to accurately reflect what was done and decided by the court. *McDonald’s Corp v Canton Twp*, 177 Mich App 153, 159; 441 NW2d 37 (1989). Here, the opinion and order granting summary disposition accurately reflected what the court decided and relief was properly denied on these grounds.

Relief is properly granted pursuant to MCR 2.612(C)(1)(a) when there is “[m]istake, inadvertence, surprise or excusable neglect.” The mistake may be that of the trial court. *Fisher v Belcher*, 269 Mich App 247, 262; 713 NW2d 6 (2005). Relief is granted only “when the circumstances are extraordinary and the failure to grant the relief would result in substantial injustice.” *Gillispie v Bd of Tenant Affairs of Detroit Housing Comm*, 145 Mich App 424, 428; 377 NW2d 864 (1985).

In this case, we conclude that relief is properly granted pursuant to MCR 2.612(C)(1)(a) because the trial court acknowledged that entry of the order granting summary disposition was a mistake predicated on its not knowing that both parties had accepted mediation. If the trial court had known both parties had accepted case evaluation, then the opinion and order would not have entered. The circumstances here are extraordinary because the parties had accepted the case evaluation several weeks before the summary disposition order was entered. The judgment or dismissal based on acceptance of the evaluation had not yet entered only because MCR 2.403 allows payment to occur in 28 days, in which case the matter will be dismissed, otherwise a judgment will enter. Granting the motion for relief does not cause injustice because judgment will enter on the case evaluation award that both parties accepted.

The trial court properly decided the motion for relief should not be granted pursuant to MCR 2.612(A)(1); however, the trial court erred when it did not consider the other grounds plaintiff raised, particularly MCR 2.612(C)(1)(a). We conclude that for the trial court to not address and grant plaintiff’s motion under MCR 2.612(C)(1)(a) is an outcome that falls outside the range of principled outcomes. *Edry*, 486 Mich at 639.

Plaintiff also sought relief pursuant to MCR 2.612(C)(1)(f). Given our disposition of the issue under MCR 2.612(C)(1)(a), we decline to address this alternative ground. See, e.g., *McDonald’s Corp*, 177 Mich App at 158-159 n 7. It is also unnecessary for us to address plaintiff’s argument that summary disposition was granted.

We reverse the trial court’s order denying plaintiff’s motion for relief from judgment, vacate the trial court’s order granting defendant summary disposition, and remand for entry of judgment consistent with the case evaluation award. We do not retain jurisdiction.

/s/ Joel P. Hoekstra

/s/ Jane E. Markey

/s/ Stephen L. Borrello